U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19633441

Date: DEC. 17, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an engineering project manager, seeks second preference immigrant classification as an individual of exceptional ability in the sciences, arts or business, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner qualifies as a member of the professions holding an advanced degree, the record did not establish that the proposed endeavor is of national importance, that he is well positioned to advance his endeavor, or that a waiver of the requirement of a job offer would be in the national interest. Accordingly, the Director determined that the Petitioner had not established eligibility for a national interest waiver. On appeal, the Petitioner submits a brief and additional evidence to assert that the Director erred in denying the petition.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification (emphasis added), as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that "[t]he term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
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> Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
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> Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth the specific evidentiary requirements for demonstrating eligibility as an individual of exceptional ability. A petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016). In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998). Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may grant a national interest waiver as matter of discretion. See also Poursina v. USCIS, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature). As a matter of discretion, the national interest waiver may be granted if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

II. ANALYSIS

A. Advanced Degree Professional

Although the Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree, we hereby withdraw this finding and conclude that the Petitioner has not met his burden in this regard. In order to show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The record contains evidence that the Petitioner earned a "título de Engenheiro Electricista" from a university in Brazil. A translator who attested to her competency in English and Spanish provided an English translation of the Petitioner's academic documents. She translated the Petitioner's diploma as a "degree of electrical engineering." While the translator's attestation certifies that the original foreign documents are in Spanish, we note that this appears to be innaccurate. Rather, the record suggests that these documents are in Portuguese. Although we acknowledge that the languages of Portuguese and Spanish are similar, we question the accuracy of the translations, as they are not accompanied by a certification of the translator's competency in Portuguese and English, nor does the translator acknowledge that the documents are in Portuguese. We conclude that the translations provided do not comply with the regulation at 8 C.F.R. § 103.2(b).

In support of the U.S. equivalency of his foreign education, the Petitioner submitted an evaluation from [redacted], a professor at [redacted] University. [redacted] provided his opinion that the Petitioner's combined education and experience are the equivalent of a U.S. master's degree in electrical engineering. Because USCIS does not accept equivalency evaluations of work experience, we examine the evaluation for the academic equivalency portion of the evaluation only. The evaulation largely contains templated language found in numerous evaluations provided by evaluation service providers and

submitted on behalf of other petitioners. The only information specific to the Petitioner's education is the name of his univerisity and the program he attended. Although [redacted] stated that the Petitioner completed his foreign degree in four years, this appears to be incorrect according to the Petitioner's transcript, which indicates the Petitioner's program of study lasted from 2001 to 2006.

We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. Matter of Sea, Inc., 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. Id. Here, the evaluator does not demonstrate specific knowledge of the Petitioner's foreign university or how his credit hours, grades, and the content of his courses translate to a U.S. education, nor does the evaulator offer sufficient analysis or support for the conclusions contained in the evaluation. As such, we conclude that this evaluation is insufficient to establish the academic equivalency of the Petitioner's foreign education.

The Director issued a request for evidence (RFE), which notified the Petitioner that although his "título de Engenheiro Electricista" was the equivalent of a U.S. bachelor's degree according to the AACRAO EDGE database, the record did not establish that he qualified as an advanced degree professional because the letters he provided to substantiate his experience did not include information concerning his specific job duties or whether his positions were full-time or part-time. In his RFE repsonse, the Petitioner provided additional letters, which sufficiently established that he possesses at least five years of full-time progressive experience in the specialty.

The Petitioner also provided an academic equivalency evaluation from [redacted] senior evaluator, [redacted] provided no independent analysis of the Petitioner's degree but rather provided a conclusion based on the information contained in the AACRAO EDGE database. The AACRAO EDGE database, available at https://www.aacrao.org/edge, is a reliable resource concerning the U.S. equivalencies of foreign education. [redacted] concluded that "[p]er EDGE specifications[,] the Titulo Profissional represents attainment of a level of education comparable to a bachelor's degree in the United States." While this appears to be a true statement concerning the equivalency of a "Titulo Profissional," it is important to note that nothing in the Petitioner's diploma and academic documentation indicates that he pursued or earned a "Titulo Profissional." In addition, [redacted] concluded that the Petitioner studied in his academic program for six years, which differs from what [redacted] concluded, as well as what the Petitioner's transcripts suggest. Accordingly, we conclude that the USCE evaluation is questionable in this matter, as it does not appear as though the evaluator provided any independent analysis or that she properly examined the Petitioner's academic credentials when forming her conclusions. As stated, in our discretion, we may use an evaluation of a person's foreign education as an advisory opinion. However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. See Matter of Sea, Inc., 19 I&N Dec. at 820.

We reviewed the AACRAO EDGE database to determine whether the Petitioner's foreign education is comparable to any U.S. degree. The database provides analysis of numerous types of academic study in which a "titulo" is awarded, including:

- Título Profissional de… (Professional title of…)

[Professional title of...]. Length of program varies; awarded following 4 to 5 years of university study;

- Especialização em...; Título de Especialista em...
  [Specialist]. Awarded following programs of various lengths; most are at least 1 year long;
- Título de Bacharel/Grau de Bacharel (Title of Bachelor)
  [Bachelor's Degree]. Awarded following 3 to 5 years of undergraduate study;
- Título de Licenciado (Licentiate)
  [Licentiate]. This teaching qualification varies in length of study from 2 to 4 years; and
- Título de Tecnólogo (Title of Technologist)
  [Title of Technologist]. Awarded following 2 to 3 years of university study, depending on entrance qualifications and the field of study.

However, the AACRAO EDGE database provides little indication that the Petitioner's diploma, which reads "conclusão do curso de Engenharia Eléctrica . . . confere o título de Engenheiro Electricista," falls within any of the above categories. Additionally, the ACCARAO EDGE glossary states that "curso" refers to a program of study, course, or subject. Based on the information contained in the record, as well as our independent examination of the AACRAO EDGE database, we conclude that the Petitioner has not met his burden to establish the U.S. equivalency of his foreign education in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). The Petitioner should be prepared to address this evidentiary shortcoming in any future filings. Due to the evidentiary deficiencies described above, the record does not persuasively establish that the Petitioner is a member of the professions with an advanced degree. As stated, we withdraw the Director's finding that the Petitioner qualifies as a member of the professions holding an advanced degree and conclude that the Petitioner has not met his burden in this regard.

B. Exceptional Ability

In his initial filing, the Petitioner alternatively asserted his eligibility as an individual of exceptional ability. The Director's RFE informed the Petitioner that although he appeared to satisfy three of the six criteria, in a final merits determination, the evidence he initially provided did not establish that he possessed a degree of expertise significantly above that which is ordinarily encountered in the sciences, arts, or business. Accordingly, the RFE requested additional evidence of the Petitioner's eligibility as an individual of exceptional ability. However, in his RFE response, the Petitioner provided additional evidence addressing his eligibility as a member of the professionals holding an advanced degree and appeared to no longer assert his eligibility as an individual of exceptional ability.

We reviewed the entirety of the record and have considered the Petitioner's eligibility as an individual of exceptional ability. While we agree with the Director that the evidence does not establish that the Petitioner qualifies as an individual of exceptional ability, we arrive at this conclusion for different reasons than the Director provided. In our analysis, we conclude that the Petitioner has not satisfied at least three of the six criteria and therefore we need not reach a final merits determination. Accordingly, the Petitioner does not qualify as an individual of exceptional ability. While we may not discuss each piece of evidence individually, we have reviewed and considered each one.

> An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A)

The evidence is insufficient to conclude that the Petitioner completed education that is the equivalent of a U.S. degree. However, the record adequately shows that the Petitioner has earned a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability. Accordingly, the evidence establishes that the Petitioner satisfied this criterion.

> Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought. 8 C.F.R. § 204.5(k)(3)(ii)(B)

The Petitioner provided numerous employment letters in his initial filing and additional letters in his RFE response. While the letters provided in his RFE response establish at least five years of full-time work experience, the Director correctly noted that most of the letters submitted with the initial filing did not state whether the Petitioner worked part-time or full-time, nor did they discuss the Petitioner's experience or duties. In the aggregate, the employment letters do not persuasively establish at least ten years of full-time experience. Furthermore, it is not apparent from the titles of the positions that the Petitioner purportedly held whether his experience was "in the occupation." For instance, "supply chain coordinator" and "trainee engineer" do not in themselves establish that they are related to the occupation sought, which is as an engineering project manager. We further observe that [redacted] signed three of the letters as the human resources coordinator for three companies: [redacted], and [redacted] While other evidence in the record, namely support letters from the Petitioner's coworkers, suggests that these entities may be related by a parent organization, it is not clear based on the letters, which only mention the titles of the companies, whether they are related and how, nor has the Petitioner offered official documentation explaining any relationship between the entities. Lastly, [redacted]'s title does not demonstrate his authority to offer employee personnel information from all three entities. Based upon the evidence provided, the Petitioner has not persuasively established his eligibility under this criterion.

> A license to practice the profession or certification for a particular profession or occupation. 8 C.F.R. § 204.5(k)(3)(ii)(C)

The Petitioner provided evidence of his registration with the [redacted] Regional Council of Engineering and Agronomy – [redacted], as well as evidence that suggests he has paid an annual fee for such registration since he earned his academic degree in 2007. However, the Petitioner has not explained or provided documentation of what the [redacted] Regional Council of Engineering and Agronomy – [redacted] is or does, nor has he explained how registration with them constitutes a license to practice a particular profession. The Petitioner has not provided evidence to explain what qualifies him to register with [redacted] Regional Council of Engineering and Agronomy – [redacted] or what such registration confers. Moreover, it is not apparent from the record that Brazil requires a license to practice engineering or engineering project management. Accordingly, the record is insufficient to establish the Petitioner's eligibility under this criterion.

> Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(D)

The Petitioner provided a website printout of salary data for the position of "supply chain coordinator" in Brazil. Although the printout states that the data provided is from the last twelve months, the printout itself is undated and therefore it is not apparent to what year the information refers. Furthermore, it is unclear if the data provided refers to monthly, annual, or some other salary timeframe. However, on appeal, the Petitioner asserts that the figures in the table are monthly salary figures. While the Petitioner has highlighted on the printout that he falls within a "full" professional level of supply chain coordinator working at an "average" sized company, it is not apparent what position the Petitioner held with what company during the timeframe to which the data refers. Therefore, the Petitioner has not corroborated his assertion that he falls within a "full" professional level at an "average" sized company.

The Petitioner's tax documentation indicates he earned an income of 66,219.40 Brazilian Real in fiscal year 2016. When dividing this figure over twelve months, it appears that he earned a monthly income of 5,518.28 Brazilian Real, a figure significantly less than the 6,692.09 salary that the website reports for a fully performing supply chain coordinator at an average sized company. The Petitioner also included several 2014 and 2015 monthly paystubs indicating that he earned a monthly base salary of 8,582 Brazilian Real. Even if the Petitioner's income in the years of 2014 and 2015 was higher than the average "full" performance supply chain coordinator at an "average" sized company, this provides a very limited picture of the Petitioner's salary in comparison to others in the profession. First, as stated, it is unclear what year the data on the website corresponds to and therefore we cannot determine whether his salary during that time corresponds to the same year. Second, the Petitioner has not established how he falls into the categories of a "full" professional level at an "average" sized company. Most importantly, however, is that even if this information were provided and the Petitioner's salary was in fact higher than most supply chain coordinators, this would simply establish that the Petitioner earned a higher-than-average salary. The evidence does not suggest that the salary he earned was due to his ability.

The record does not support a finding that the Petitioner commands a particular salary that demonstrates exceptional ability. For the foregoing reasons, the Petitioner has not satisfied this criterion.

Evidence of membership in professional associations. 8 C.F.R. § 204.5(k)(3)(ii)(E)

The Petitioner provided his registration with the [redacted] Regional Council of Engineering and Agronomy – [redacted] as evidence of membership in a professional association. The Petitioner has not explained how this registration serves as both a membership and a license. As the Director explained in the RFE, the Petitioner has not provided documentation on what the [redacted] Regional Council of Engineering and Agronomy – [redacted] requires in order to become a member or the significance of the Petitioner's registration with the organization. As previously stated, it is unclear what qualifies him to register with [redacted] Regional Council of Engineering and Agronomy – [redacted] or what such registration confers. The Petitioner has not offered background information on the [redacted] Regional Council of Engineering and Agronomy – [redacted] and it cannot be determined from the information provided that this entity is a professional association. Accordingly, the evidence does not establish that the Petitioner satisfied this criterion.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. 8 C.F.R. § 204.5(k)(3)(ii)(F)

We reviewed the entire record for evidence of recognition for the Petitioner's achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. We acknowledge evidence that includes, but is not limited to certificates of training, national interest waiver eligibility evaluations, congratulatory emails, and numerous letters of support from coworkers and employers. As previously stated, while we may not discuss each piece of evidence individually, we have reviewed and considered each one.

Although the letters of support indicate that his coworkers and employers hold him in high regard personally and professionally, as well as that he has received recognition for achievements and significant contributions within the companies he has worked for, this evidence does not suggest that the Petitioner has received recognition for achievements and significant contributions to the industry or field. To illustrate with several examples, [redacted] referenced the Petitioner's research and success at obtaining a water-oil separator that increased his employer's efficiency and reduced cost. Although [redacted] claimed that the separator positively impacted the environment, there is nothing in the record to substantiate this assertion. Furthermore, the cost savings, increased efficiency, and use of the separator, appear to have benefitted the Petitioner's former employer and its clients, but not the field or industry as a whole. Similarly [redacted] wrote that the Petitioner made changes to the company's supply chain portfolio, which resulted in savings for the company and lowered energy costs for consumers in the region. However, [redacted] did not provide details on what specific changes the Petitioner made nor does the record include evidence to corroborate the claimed millions of dollars in savings or that consumers in the region actually paid less for their energy needs. Even if such evidence was provided, it would not establish how this constitutes an achievement or contribution to the field or industry. [redacted] wrote that with the Petitioner's current employer, the Petitioner has negotiated millions of dollars' worth of new contracts, was promoted, developed additional clients for his employer, and reduced his employer's costs. While these accomplishments appear important to the Petitioner's employer, the letter and other evidence in the record do not suggest that such accomplishments constitute recognition for achievements and significant contributions to the industry or field. Likewise, the emails that congratulate the Petitioner and recognize his success in various work endeavors do not feature any achievements or contributions to the industry or field, but rather represent recognition for internal work accomplishments.

In review of the Petitioner's professional plan and statement, we observe that he claimed that he has extraordinary negotiation abilities, developed techniques and innovative technologies, as well as that he can create customizations. However, the evidence of record does not corroborate these claims. For instance, the Petitioner does not explain how his techniques differ or are better than general project management techniques nor does he offer detail on what his technologies are or what makes them innovative. The Petitioner has not provided examples of his customizations or how his negotiation abilities differ. The evidence does not support a conclusion that he has personally developed anything from which others in the field or industry could benefit. Even if the Petitioner offered evidence to support a finding that he developed techniques, innovations, or customizations, this would still not establish how others in the field or industry would know about and benefit from what he developed

such that the Petitioner's work would constitute achievements and significant contributions to the industry or field.

Based on the evidence provided, the Petitioner has not established how his professional achievements extend beyond his individual employers and clients. While the Petitioner may be a valuable employee with an impressive record of accomplishments, his professional successes do not represent achievements and significant contributions to the industry or field. Accordingly, the evidence does not establish that the Petitioner satisfied this criterion.

Summary

The record does not support a finding that the Petitioner meets at least three of the six regulatory criteria for exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii). The Petitioner has not established his eligibility as an individual of exceptional ability under section 203(b)(2)(A) of the Act. As previously outlined, the Petitioner must show that he either possesses exceptional ability or is an advanced degree professional before we reach the question of the national interest waiver. We conclude that the evidence does not establish that the Petitioner meets the regulatory criteria for classification as an individual of exceptional ability or that he is a member of the professions holding an advanced degree. As the Petitioner has not established eligibility for the underlying immigrant classification, the issue of the national interest waiver is moot. The waiver is available only to foreign workers who otherwise qualify for classification under section 203(b)(2)(A) of the Act. Further analysis of her eligibility under the prongs outlined in Dhanasar would serve no meaningful purpose.

Because the identified reasons for dismissal are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the arguments regarding eligibility under the Dhanasar framework. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not demonstrated that he qualifies for classification as a member of the professions holding an advanced degree or as an individual of exceptional ability under section 203(b)(2)(A) of the Act. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Otiende, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.